No. 14-1382

In The
Supreme Court of the United States

AMERICOLD LOGISTICS, LLC,
and AMERICOLD REALTY TRUST,

Petitioners,

v.

CONAGRA FOODS, INC.,
and SWIFT-ECKRICH, INC.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Tenth Circuit

RESPONDENTS CONAGRA FOODS, INC.'S AND SWIFT-ECKRICH, INC.'S BRIEF IN RESPONSE TO PETITION FOR WRIT OF CERTIORARI

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CORPORATE DISCLOSURE

Swift-Eckrich, Inc. is a wholly-owned subsidiary of ConAgra Foods, Inc. f/k/a ConAgra, Inc. No publicly held company owns ten percent or more of ConAgra's stock.

REASONS FOR GRANTING THE PETITION

A. Certiorari jurisdiction exists to clarify the law. Here, the Circuit Courts are deeply divided regarding a trust's citizenship for diversity jurisdiction purposes. Supreme Court review is necessary to resolve the circuit split.

Certiorari jurisdiction exists to clarify the law. *City & Cnty. of San Francisco, Calif. v. Sheehan*, 135 S. Ct. 1765, 1774, 191 L. Ed. 2d 856 (2015). Thus, writ of certiorari review may be exercised when the Circuits are split on the same important matter. Sup. Ct. R. 10(a).

Here, the Circuits are divided on the appropriate test for determining a trust's citizenship for diversity jurisdiction purposes. Petitioners' Petition for Writ of Certiorari adequately elucidates the split. The circuit split rests on differing interpretations of the Court's opinions in *Navarro Sav. Ass'n v. Lee*, 446 U.S. 458 (1980) and *Carden v. Arkoma Assocs.*, 494 U.S. 185 (1990), and their application to suits involving a trust, rather than the trustee(s).

After the Court's decision in *Carden*, the First, Second, Fifth, Sixth, Seventh, and Ninth Circuit Courts of Appeals all decided, relying on *Navarro*, that the trustees' citizenship determines the trust's citizenship. *See Erlich v. Ouellette, Labonte, Roberge & Allen, P.A.*, 637 F.3d 32, 34 n.2 (1st Cir. 2011); *E.R. Squibb & Sons, Inc. v. Accident & Cas. Ins. Co.*, 160 F.3d 925, 931 (2d Cir. 1998); *Mullins v. TestAmerica,*

Inc., 564 F.3d 386, 397 n.6 (5th Cir. 2009); *Homfeld II, L.L.C. v. Comair Holdings, Inc.*, 53 F. App'x 731, 732 (6th Cir. 2002) (unpublished); *May Dep't Stores Co. v. Fed. Ins. Co.*, 305 F.3d 597, 599 (7th Cir. 2002); *Johnson v. Columbia Props. Anchorage, LP*, 437 F.3d 894, 899 (9th Cir. 2006).

The Third, Eleventh, and (most recently) Tenth Circuit Courts of Appeals, however, disagree. Contrary to the majority view, these Circuits have held *Carden* dictates that a trust's citizenship should be determined by the trust's "members," and such "membership" should include more than just the trustees. *See Emerald Investors Trust v. Gaunt Parsippany Partners*, 492 F.3d 192, 201 (3d Cir. 2007); *Riley v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 292 F.3d 1334, 1338–40 (11th Cir. 2002); *ConAgra Foods, Inc. v. Americold Logistics, LLC*, 776 F.3d 1175, 1178–81 (10th Cir. 2015), *as amended* (Jan. 27, 2015). There is even disagreement within this minority position as to which individuals constitute a trust's "membership." *See Emerald Investors Trust*, 492 F.3d at 200–05 (examining "[t]he four alternatives" and finding both the trustees' and beneficiaries' citizenship controls); *Riley*, 292 F.3d at 1338–40 (finding the beneficiaries' citizenship alone controls); *ConAgra*, 776 F.3d at 1181–82 (finding, "at a minimum, a trust's membership includes the trust's beneficiaries," but not deciding whether it also includes the trustees).

The Tenth Circuit's decision below deepened a clear circuit split which Respondents agree the United

States Supreme Court should grant certiorari to resolve. *See* Sup. Ct. R. 10(a).

B. Diversity jurisdiction rules should not "invite extensive threshold litigation" or be "administered in different ways in different parts of the country." The law concerning a trust's right to access federal courts is in disarray, inviting needless threshold litigation reaching different results depending on locality. A writ of certiorari is warranted.

In *Navarro*, the Court stressed "'[i]t is of first importance to have [diversity jurisdiction rules] [that] will not invite extensive threshold litigation over jurisdiction.'" *See Navarro*, 446 U.S. at 464 n.13 (quoting American Law Institute, Study of the Division of Jurisdiction between State and Federal Courts 128 (1969)). "'Jurisdiction should be as self-regulated as breathing; litigation over whether the case is in the right court is essentially a waste of time and resources.'" *Id.* (quoting Currie, The Federal Courts and the American Law Institute, Part I, 36 U. Chi. L. Rev. 1 (1968)).

As Petitioners aptly point out, the law governing a trust's ability to litigate in federal courts is presently in a state of "mass confusion and dissension in the lower courts." Jonathan J. Ossip, Diversity Jurisdiction and Trusts, 89 N.Y.U. L. Rev. 2301, 2334 (2014). Without this Court's guidance, extensive threshold

diversity jurisdiction litigation will continue, further wasting valuable judicial time and resources.

Moreover, "federal law is being administered in different ways in different parts of the country; citizens in some circuits are subject to entitlements that citizens in other circuits are not entitled to." *Beaulieu v. United States*, 497 U.S. 1038, 1039, 110 S. Ct. 3302 (Mem.), 3303, 111 L. Ed. 2d 811 (1990) (White, J., dissenting) (denial of petition for writ of certiorari). Supreme Court review is necessary to resolve this matter of public importance that has divided the Circuit Courts of Appeals. *See Layne & Bowler Corp. v. W. Well Works*, 261 U.S. 387, 393 (1923) (granting writ of certiorari appropriate "in cases involving principles the settlement of which is of importance to the public, as distinguished from that of the parties, and in cases where there is a real and embarrassing conflict of opinion and authority between the Circuit Courts of Appeals").

CONCLUSION

For the foregoing reasons, Respondents ConAgra Foods, Inc. and Swift-Eckrich, Inc. request that this Court grant review of the Tenth Circuit Court of Appeals' holding that the District Court lacked subject matter jurisdiction over the suit underlying this appeal.

Respectfully submitted,

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